

ORIGINAL

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U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED

JUN - 6 2011
CLERK, U.S. DISTRICT COURT
By _____ Deputy

[Handwritten signature]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

LISA ARMSTRONG, § Civil Action No.
§
Plaintiffs, § 4 - 11 CV - 374 - A
§
vs. §
§
§
HUNTER WARFIELD OF NEW ENGLAND, §
INC., a/k/a HUNTER WARFIELD, INC., §
§
Defendant. §
§

(Unlawful Debt Collection Practices)

Preliminary Statement

1. Plaintiff, Lisa Armstrong, brings this action under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA"), as well as under the Texas Debt Collection Act, Tex. Finance Code § 392.001, *et seq.* ("TDCA") and the Texas Deceptive Trade Practices Act, Subchapter E, Chapter 17, Business & Commerce Code ("DTPA"), to obtain statutory damages, actual damages, injunctive relief, declaratory relief, and other relief for the Defendant's violations of the FDCPA, the TDCA and the DTPA.

2. Defendant, Hunter Warfield of New England, Inc. ("Hunter Warfield") attempted to collect a consumer debt allegedly owed by Plaintiff, arising from a purported obligation to Oak Forest Apartments for back rent and a variety of other charges stemming from an apartment home. The obligation ("Debt") required Plaintiff to pay money arising out of transactions in which money, property, insurance, or services were the subject thereof and the same were primarily for personal, family, or household purposes. The alleged debt is not a business debt, and would have been incurred for ordinary living expenses arising from the rental of an apartment home. Plaintiff disputes the debt.

Jurisdiction and Venue

3. Jurisdiction of this Court attains pursuant to 15 U.S.C. § 1692k(d), 28 U.S.C. §§ 1331 and 1337(a), and the doctrine of supplemental jurisdiction for the TDCA claims pursuant to 28 U.S.C. § 1367.

4. Venue in the Northern District of Texas is proper under 28 U.S.C. § 1391(b)-(c) and because the acts and transactions occurred here and the Defendant transacts business here.

Parties

5. Plaintiff is a citizen of the State of Texas. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3) and Tex. Finance Code § 392.001(1).

6. Hunter Warfield is an entity engaged in the business of collecting consumer debts in the Northern District of Texas. The principal purpose of Hunter Warfield's business is the collection of consumer debts using the mails and telephone, and it regularly attempts to collect consumer debts for others. Hunter Warfield is a "debt collector" as defined by 15 U.S.C. § 1692a(6) and Tex.

Finance Code § 392.001(6). Hunter Warfield is also a "third-party debt collector" as defined by Tex.

Finance Code § 392.001(7).

Factual Allegations

7. On or about January 24, 2011 an individual using the name "Adam Rock" telephoned the Plaintiff on her cellular telephone and left this message for her:

"Hello, this message is for Lisa Armstrong. This is Adam Rock. I have a decision to make and I'd like to speak with you before making it. It is notice for the record that today is January 24th and it is approximately 7:40. You can reach my office by calling 813-283-4616. It is important that I speak with you as soon as possible, as my decision will be made whether or not you return the call. I hope to speak to you today."

8. The call did not identify that it was in connection with the collection of a debt, nor that it was from Hunter Warfield.

9. Plaintiff returned the call and learned that "Adam Rock" is a collector. When Plaintiff informs "Adam Rock" that she is unable to meet his payment demands, he gives her 24 hours to find someone to help her pay the debt he is attempting to collect.

10. Plaintiff calls back on January 25th, however "Adam Rock" is not available. That same day, "Adam Rock" calls Plaintiff's ex-husband. The purpose of the call to Plaintiff's ex-husband was that "he was looking for Lisa Armstrong."

11. "Adam Rock" also left a message on Plaintiff's boyfriend's cellular telephone, allegedly because he was looking to speak to Plaintiff.

12. On January 26, 2011, Plaintiff spoke to "Adam Rock" and inquired as to why he would call both her ex-husband and boyfriend, as he was aware of her telephone number. "Adam Rock" justified the calls by claiming that they were made as part of an "asset investigation."

13. The foregoing acts and omissions were undertaken on behalf of the Defendant by its respective officers, agents, or employees acting at all times relevant hereto within the scope of that relationship.

14. The foregoing acts and omissions of the Defendant were undertaken by it willfully, intentionally, knowingly, and/or in gross disregard of the rights of the Plaintiff.

15. The foregoing acts and omissions of the Defendant were undertaken indiscriminately and persistently, as part of Defendant's regular and routine collection efforts, and without regard to or consideration of the rights of the Plaintiff.

First Claim for Relief

16. The Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs. The Defendant's violations of the FDCPA include, but are not limited to the a. following:

- a. In violation of 15 U.S.C. 1692c(b), the Defendant communicated with a third party (a person other than the Plaintiff, Plaintiff's attorney, a consumer reporting agency, the creditor, the creditor's attorney, or the Defendant's attorney) without the Plaintiff's prior consent in connection with the collection of a consumer debt.
- b. In violation of 15 U.S.C. § 1692d, the Defendant engaged in conduct the natural consequence of which was to harass, oppress, or abuse a person in connection with the collection of a debt, which conduct included calling others for purposes other than obtaining location information of the Plaintiff. Those purposes included embarrassment of the Plaintiff, and an attempt to coerce Plaintiff into making a payment arrangement with the Defendant.
- c. In violation of 15 U.S.C. § 1692e, 15 U.S.C. § 1692e (2)(a), 15 U.S.C. § 1692e(10), and the "least sophisticated consumer standard," the Defendant used objectively false representations and/or false, deceptive, or misleading representations or means in connection with the collection of a consumer debt, stating that some decision would be made regarding the Plaintiff when no such decision would be made. Defendant's reasons for making these statements were to create a false sense of urgency, thereby coercing Plaintiff

into making some payment arrangement with Defendant.

- d. In violation of 15 U.S.C. § 1692e(11), the Defendant failed to disclose in a subsequent communication that the call was from a debt collector.
- e. In violation of 15 U.S.C. § 1692f, the Defendant used unfair or unconscionable means to collect or attempt to collect a consumer debt, which conduct included calling others for purposes other than obtaining location information of the Plaintiff. Those purposes included embarrassment of the Plaintiff, and an attempt to coerce Plaintiff into making a payment arrangement with the Defendant.

17. Under 15 U.S.C. § 1692k, Defendant's violations of the FDCPA render it liable to Plaintiff for statutory damages, actual damages, costs, and reasonable attorney's fees.

Second Claim for Relief

18. The Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs. The Defendant's violations of the TDCA include, but are not limited to the following:

- a. In violation of Tex. Fin. Code § 392.301(a)(8), the Defendant took an action prohibited by law.
- b. In violation of Tex. Fin. Code Ann. § 392.302(1), Defendant attempted to collect a debt through oppression, harassment, or abuse by using language intended to abuse unreasonably the hearer or reader.
- c. In violation of Tex. Fin. Code § 392.304(a)(8), the Defendant misrepresented the character of a consumer debt.
- d. In violation of Tex. Fin. Code § 392.304(a)(19), Defendant used false representations and deceptive means to collect a consumer debt.

19. Under Tex. Fin. Code Ann. § 392.403, the Defendant's violations of the TDCA render it liable to Plaintiff for statutory damages, actual damages, injunctive relief, declaratory relief, costs, and reasonable attorney's fees.

Third Claim for Relief

20. The Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs. The Defendant's violations of the DTPA include, but are not limited to the following:

- a. Pursuant to Tex. Fin. Code Ann. § 392.404, the Defendant's violations of the TDCA also constitute a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code, ("DTPA") and is actionable under that subchapter.

21. Under Tex. Bus. & Com. Code Ann. § 17.50(b)(2), the Defendant's violations of the DTPA render it liable to Plaintiffs for injunctive relief and reasonable attorney's fees. Specifically, Plaintiff seeks to enjoin Defendant from making calls to persons other than the Plaintiff, Plaintiff's attorney, a consumer reporting agency, the creditor, the creditor's attorney, or the Defendant's attorney) without the Plaintiff's prior consent in connection with the collection of a consumer debt.

Prayer for Relief

WHEREFORE, the Plaintiffs pray that this Court:

1. Declare that Defendant's actions violate the FDCPA, the TDCA and the DTPA.
2. Enjoin the Defendant's actions which violate the TDCA and the DTPA.
3. Enter judgment in favor of Plaintiffs and against Defendant for statutory damages, actual damages, costs, and reasonable attorneys' fees as provided by 15 U.S.C. § 1692k(a) and/or Tex. Fin. Code Ann. § 392.403 and/or Tex. Bus. & Com. Code § 17.50(d).
4. Grant such further relief as deemed just.

Respectfully submitted,



Jerry J. Jarzombek
Texas Bar No. 10589050

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DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury in this action.

Respectfully submitted,



Jerry J. Jarzombek
Texas Bar No. 10589050

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Lisa Armstrong

ORIGINAL**DEFENDANTS**

Hunter Warfield of New England a/k/a Hunter Warfield, Inc.

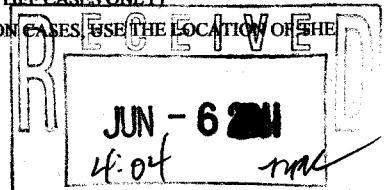
4 - 11 CV - 374 - A

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

(b) County of Residence of First Listed Plaintiff Tarrant
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorney's (Firm Name, Address, and Telephone Number)
Jerry J. Jarzombek; The Law Office of Jerry Jarzombek, PLLC;
714 W. Magnolia Avenue; Fort Worth, TX 76104; 817-348-8325**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input type="checkbox"/> PTF 1	<input type="checkbox"/> DEF 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF 4	<input type="checkbox"/> DEF 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability			<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ft)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	FEDERAL TAX SUITS	<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
			<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application	
			<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	
			<input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation

Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 USC 1692 et seq.

Brief description of cause:

Unlawful debt collection

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

1,000.00 +

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No**VIII. RELATED CASE(S) (See instructions)**

PENDING OR CLOSED:

JUDGE _____

DOCKET NUMBER _____

DATE
06/06/2011

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

Fw 14443

\$350.00

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE